IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.408 OF 2005

Nawabzada Bahauddin ...Appellant

Vs.

M/s.Krishna Stone Traders & Ors. ...Respondents

Mr.Anil Singh with Mr.D.R.Shah for the Appellant
Mr.B.R.Zaveri for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: APRIL 26,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Notice of Motion taken out by the Appellant-Plaintiff has been dismissed by the learned Trial Judge.

2. The case of the Appellant-Plaintiff is that he has erected an advertisement hoarding on a plot of land. His case is that the Respondent No.1 is carrying on business of importing marbles on the said plot of land and the Respondent No.2 is residing on the said plot of land. The case of the Appellant is that the Respondent No.3 is the owner of plot of land on which the hoarding has been erected. The advertisement hoarding has been displayed by the Appellant-Plaintiff with the permission of the original owner-Respondent No.3 and the Respondent Nos.1 and 2 have no right to prevent the Appellant from entering the said plot of land for the purposes of maintenance of hoarding and displaying the advertisements on the said hoardings.

3. When the Notice of Motion was heard, no reply was filed by the Respondent No.3-original owner. The learned Trial Judge recorded a prima facie finding that the Appellant-Plaintiff was entering the plot of land with the permission of the Respondent No.1-Defendant No.1 and the last of such permissions was granted in December 1999. The learned Trial Judge has recorded a prima facie finding that from the year 2000 the Appellant is being prevented from using the hoarding for the purposes of displaying the advertisement. In view of this prima facie finding the learned Trial Judge has dismissed the Notice of Motion.

4. Shri Singh, learned Counsel for the Appellant stated that now the Respondent No.3 has appeared in the suit and he has filed an Affidavit disputing right, title or interests of Respondent Nos.1 and 2. Shri Singh stated that if this Court is not inclined to entertain this Appeal, he may be granted liberty to take out a fresh Notice of Motion. The said request is opposed by the learned Counsel for Respondent No.1.

5. Considering the prima facie findings recorded by the learned Trial Judge on the basis of material available at that time on record, I find that there is no error in the approach of the learned Trial Judge while rejecting the prayer for equitable and discretionary relief of temporary injunction.

6. If Respondent No.3 who claims to be the owner of the land in question has appeared and has filed any new material on record, it is for the Appellant to take out appropriate proceedings in accordance with law.

7. Subject to observations made above, Appeal from Order is dismissed with no order as to costs.

Judge.